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30  
31 UNITED STATES DISTRICT COURT  
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33 NORTHERN DISTRICT OF CALIFORNIA  
34  
35 SAN JOSE DIVISION

36 THOMAS DAVIDSON, TODD CLEARY,  
37 ERIC SIEGAL, MICHAEL PAJARO, JOHN  
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39 TAYLOR BROWN, JUSTIN BAUER,  
40 HEIRLOOM ESTATE SERVICES, INC.,  
41 KATHLEEN BAKER, MATT MUILENBERG,  
42 WILLIAM BON, and JASON PETTY on behalf  
43 of themselves and all others similarly situated,  
44 Plaintiffs,  
45  
46 vs.  
47 APPLE INC.,  
48 Defendant.

49 Case No. 5:16-cv-04942-LHK

50 **JOINT CASE MANAGEMENT  
51 STATEMENT**

52 Date: May 23, 2018  
53 Time: 2:00 p.m.  
54 Dept.: Courtroom 8 – 4th Floor  
55 Judge: Honorable Lucy H. Koh

1 Pursuant to the Court's May 8, 2018 Notice Regarding the Next Case Management Conference  
 2 (ECF No. 227), the parties respectfully submit the following Joint Case Management Statement in  
 3 advance of the Court's May 23, 2018 Further Case Management Conference.

4 On May 8, 2018, the Court issued an order denying Plaintiffs' Motion for Class Certification.  
 5 (ECF No. 226.) In this Order, the Court noted that the parties had previously selected 10 claims to  
 6 litigate through summary judgment ("Selected Claims"): (1) New Jersey Consumer Fraud Act, N.J.  
 7 Stat. Ann. § 56:8-1; (2) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201;  
 8 (3) Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010; (4) Illinois Consumer Fraud  
 9 and Deceptive Trade Practices Act, Ill. Comp. Stat ¶ 505; (5) Texas Deceptive Trade Practices Act,  
 10 Tex. Bus. & Com. Code ¶ 17.41; (6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105;  
 11 (7) common law fraud; (8) breach of express warranty; (9) breach of implied warranty; and  
 12 (10) Magnusson-Moss Act.

13 Pursuant to the Court's July 25, 2018 Order, the Court dismissed certain of the Selected  
 14 Claims. (ECF No. 103.) Plaintiffs subsequently sought to certify a class or sub-classes pursuant to the  
 15 following claims: (1) a Colorado Consumer Protection Act claim; (2) a Florida Deceptive and Unfair  
 16 Trade Practices Act claim; (2) an Illinois Consumer Fraud and Deceptive Trade Practices Act claim;  
 17 (3) Texas Deceptive Trade Practices Act claim; and (4) a Washington Consumer Protection Act claim.  
 18 On May 8, 2018, the Court denied Plaintiffs' class certification motion.

19 As ordered by the Court on August 8, 2017 (ECF No. 109), the fact discovery cutoff is May 25,  
 20 2018. Opening expert reports are due June 15, 2018; rebuttal reports are due July 6, 2018, and the  
 21 expert discovery cutoff is July 27, 2018. Dispositive motions are due August 16, 2018.

22 **Plaintiffs' Statement**

23 After reviewing the Court's order denying their class certification motion, Plaintiffs intend to  
 24 file either a motion for leave to file a motion for reconsideration under Local Rule 7-9, or an appeal  
 25 under Fed. R. Civ. P. 23(f), or both, prior to the Case Management Conference Statement. In light of  
 26 this, Plaintiffs believe a stay of the litigation is appropriate until these motions are resolved.

27 In addition, the Court has set one summary judgment motion per side for the entire case, due on  
 28 August 16, 2018. (ECF No. 145, at 2 ("Last Day to File Dispositive Motions (one per side in the entire

1 case”.) Plaintiffs believe that briefing the remaining parked claims under Federal Rules of Civil  
2 Procedure, Rule 12(b)(6), and litigating the remaining claims through class certification and summary  
3 judgment in time for the August 16, 2018, dispositive motion deadline does not appear feasible.  
4 Plaintiffs’ propose that the parties and the Court discuss alterations to the schedule at the case  
5 management conference or, if the Court prefers, following the resolution of the motion under Local  
6 Rule 7-9 and/or the Rule 23(f) appeal.

7 **Apple’s Statement**

8 Apple does not believe the schedule should be stayed pending Plaintiffs’ motion for  
9 reconsideration and/or Rule 23(f) petition. Plaintiffs cannot meet the standard for reconsideration  
10 because there are no new facts or law and no manifest failure by the Court to consider the facts or law  
11 presented. Similarly, Plaintiffs cannot establish that they are entitled to interlocutory appeal under  
12 Rule 23(f).

13 At the outset, on November 30, 2016, the Court directed the Parties to litigate the Selected  
14 Claims through summary judgment. Plaintiffs have had ample opportunity to conduct discovery in this  
15 matter. Discovery has nearly closed as only nine days remain in the discovery period, and four Apple  
16 witnesses are scheduled to appear for deposition next week. Pursuant to the Court’s direction, Apple  
17 intends to file a single motion for summary judgment on the five Selected Claims at issue in the  
18 Court’s May 8, 2018 Order Denying Class Certification that are being pursued on an individual basis  
19 by Plaintiffs Bauer, Bon, Borzymowski, Brown, Muilenburg, and Siegal. Apple is prepared to proceed  
20 with these Selected Claims through summary judgment on the schedule ordered by the Court.

1 DATED: May 16, 2018

Respectfully submitted,

2 McCUNE WRIGHT AREVALO, LLP

3 By: /s/ Richard D. McCune

Richard D. McCune

4 Attorneys for Plaintiffs and the Putative Class

5 DATED: May 16, 2018

Respectfully submitted,

6 MORRISON & FOERSTER LLP

7 By: /s/ Arturo J. González

ARTURO J. GONZÁLEZ

8 Attorneys for Defendant Apple Inc.

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

I, Arturo J. González, attest that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

DATED: May 16, 2018

By: /s/ Arturo J. González  
Arturo J. González